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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RICHARD EDWARD JACKSON, III,
12 Petitioner,
13 v.
14 STATE OF CALIFORNIA,
15 Respondent.

Civil No. 10-1696 WQH (CAB)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE AND WITH
LEAVE TO AMEND**

16 Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas
17 Corpus pursuant to 28 U.S.C. § 2254.

18 **FAILURE TO SATISFY FILING FEE REQUIREMENT**

19 Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma
20 pauperis. This Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or
21 qualified to proceed in forma pauperis. *See* Rule 3(a), 28 U.S.C. foll. § 2254.

22 **FAILURE TO STATE A COGNIZABLE CLAIM ON HABEAS CORPUS**

23 Upon review of the Petition, it appears to the Court that a Petition for Writ of Habeas
24 Corpus brought pursuant to § 2254 is not the proper vehicle for the claims Petitioner presents.
25 Challenges to the fact or duration of confinement are brought by petition for a writ of habeas
26 corpus, pursuant to 28 U.S.C. § 2254; challenges to conditions of confinement are brought
27 pursuant to the Civil Rights Act, 42 U.S.C. § 1983. *See Preiser v. Rodriguez*, 411 U.S. 475,
28 488-500 (1973). When a state prisoner is challenging the very fact or duration of his physical

1 imprisonment, and the relief he seeks is a determination that he is entitled to immediate release
 2 or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.
 3 *Id.* at 500. On the other hand, a § 1983 action is a proper remedy for a state prisoner who is
 4 making a constitutional challenge to the conditions of his prison life, but not to the fact or length
 5 of his custody. *Id.* at 499; *McIntosh v. United States Parole Comm’n*, 115 F.3d 809, 811-12
 6 (10th Cir. 1997).

7 In the present case, it appears that Petitioner challenges the conditions of his prison life,
 8 but not the fact or length of his custody. Petitioner lists various problems he claims he is facing
 9 in prison. Specifically, Petitioner claims he is not getting the proper medication to treat his
 10 depression. Petitioner’s claim is not cognizable on habeas because it does not challenge the
 11 constitutional validity or duration of confinement. *See* 28 U.S.C. 2254(a); *Preiser*, 411 U.S. at
 12 500; *Heck v. Humphrey*, 512 U.S. 477, 480-85 (1994). “Section 2254 applies only to collateral
 13 attacks on state court judgments.” *McGuire v. Blubaum*, 376 F. Supp. 284, 285 (D. Ariz. 1974).
 14 Thus, Petitioner has not stated a cognizable habeas claim pursuant to § 2254.

15 Rule 4 of the Rules Governing Section 2254 Cases provides for summary dismissal of a
 16 habeas petition “[i]f it plainly appears from the face of the petition and any exhibits annexed to
 17 it that the petitioner is not entitled to relief in the district court.” Rule 4, 28 U.S.C. foll. § 2254.
 18 Here, it is plain from the petition that Petitioner is not presently entitled to federal habeas relief
 19 because he has not alleged that the state court violated his federal rights.

20 **FAILURE TO NAME PROPER RESPONDENT**

21 Review of the Petition also reveals that Petitioner has failed to name a proper respondent.
 22 On federal habeas, a state prisoner must name the state officer having custody of him as the
 23 respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28
 24 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to
 25 name a proper respondent. *See id.*

26 The warden is the typical respondent. However, “the rules following section 2254 do not
 27 specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the warden of the
 28 institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal

institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a petitioner is in custody due to the state action he is challenging, ‘[t]he named respondent shall be the state officer who has official custody of the petitioner (for example, the warden of the prison).’” *Id.* (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note).

A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of] habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The actual person who is [the] custodian [of the petitioner] must be the respondent.” *Ashley v. Washington*, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of habeas corpus acts upon the custodian of the state prisoner, the person who will produce “the body” if directed to do so by the Court. “Both the warden of a California prison and the Director of Corrections for California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d at 895.

Here, Petitioner has incorrectly named “State of California,” as Respondent. In order for this Court to entertain the Petition filed in this action, Petitioner must name the warden in charge of the state correctional facility in which Petitioner is presently confined or the Director of the California Department of Corrections. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

CONCLUSION


For all the foregoing reasons, the Court **DISMISSES** this case without prejudice and with leave to amend. If Petitioner wishes to challenge the validity of a state court conviction or the length of his incarceration via a habeas corpus petition, he must submit, **no later than October 25, 2010**: (1) a copy of this Order with the \$5.00 fee **OR** with adequate proof of his inability to pay the fee; **AND** (2) a First Amended Petition which cures the pleading deficiencies outlined in this Order. If Petitioner wishes challenge the conditions of his confinement, he must file a new civil complaint pursuant to 42 U.S.C. § 1983 which will be given a new civil case number. **THE CLERK OF COURT IS DIRECTED TO MAIL PETITIONER A BLANK MOTION TO PROCEED IN FORMA PAUPERIS FORM, A BLANK FIRST AMENDED**

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1 PETITION FORM, AND A BLANK CIVIL RIGHTS COMPLAINT PURSUANT TO 42
2 U.S.C. § 1983 TOGETHER WITH A COPY OF THIS ORDER.

3 IT IS SO ORDERED.

4 DATED: August 23, 2010

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6 **WILLIAM Q. HAYES**
7 United States District Judge
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